

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION ONE/SUBREGION 34**

**WATERBURY EXTENDED CARE, LLC  
D/B/A APPLE REHAB-WATERTOWN**

**Employer**

**and**

**CASE 01-RC-242350**

**UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
LOCAL 371**

**Petitioner**

**ACTING REGIONAL DIRECTOR'S DECISION  
ON CHALLENGED BALLOTS AND ORDER**

On May 29, 2019,<sup>1</sup> United Food and Commercial Workers International Union, Local 371 (Petitioner) filed a representation petition seeking certification. On June 28, an election was conducted pursuant to the terms of a Stipulated Election Agreement which I approved on June 7. This agreement set forth a voting unit consisting of all Licensed Practical Nurses and excluding, *inter alia*, all other employees of the Employer at its Waterbury, Connecticut location.

At the election, the Petitioner challenged the voting eligibility of four individuals. Petitioner subsequently withdrew one of these challenges, and the parties agreed to sustain another challenge on the basis that the employee did not meet the minimum hours requirement to be eligible to vote. The remaining two challenges were of ballots cast by Unit Manager Sylvia Mancini and RCC/MDS Coordinator Kathleen Rinaldi.<sup>2</sup>

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<sup>1</sup> All dates hereinafter are in 2019.

<sup>2</sup> As was fully adduced at the hearing, Petitioner challenged Mancini's ballot on the basis that her job title is unambiguously excluded from the unit set forth in the Stipulated Election Agreement and that she is a supervisor within the meaning of Section 2(11) of the Act. Petitioner challenged Rinaldi's ballot on the basis that her job title is unambiguously excluded from the unit set forth in the Stipulated Election Agreement; that she is a supervisor within the meaning of Section 2(11) of the Act; and that she lacks a sufficient community of interest with employees included in the unit.

The tally of ballots from the election showed that of the approximately thirty (30) eligible voters, thirteen (13) votes were cast for the Petitioner and eleven (11) votes were cast against the Petitioner. The two remaining challenged ballots were sufficient to affect the results of the election. Accordingly, I directed that a hearing be held, providing the parties with an opportunity to present evidence, to determine whether the challenged ballots should be opened and counted.

On July 31 and August 1, a hearing was held in Hartford, Connecticut, before a Hearing Officer of the National Labor Relations Board (Board). On September 4, the Hearing Officer issued her Report on Challenged Ballots containing her findings and recommendations (the Hearing Officer's Report). The Hearing Officer concluded that Mancini was a statutory supervisor and that Rinaldi lacked a community of interest with employees in the unit. On that basis, the Hearing Officer recommended that the challenges to their ballots be sustained.

No exceptions have been filed to the Hearing Officer's Report within the time period provided.<sup>3</sup> The Petitioner therefore has received a majority of the votes cast. Accordingly, in the absence of exceptions, I adopt the hearing officer's findings and recommendations<sup>4</sup> and issue a certification of representative.

#### **CERTIFICATION OF REPRESENTATIVE**

**IT IS HEREBY CERTIFIED** that a majority of the valid ballots have been cast for the Petitioner, United Food and Commercial Workers International Union, Local 371 and that it is the exclusive representative of all the employees in the following bargaining unit:

All full-time, regular part-time and per diem Licensed Practical Nurses employed by the Employer at its Waterbury, Connecticut location; but excluding all other employees, and guards, professional employees, and supervisors as defined in the Act.

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<sup>3</sup> The Employer did not file exceptions. Accordingly, on September 19, the Union withdrew its timely cross exceptions as moot.

<sup>4</sup> The Hearing Officer's Decision concluded that Mancini is a supervisor within the meaning of Section 2(11) of the Act and Rinaldi lacks a community of interest with the unit. I note that the employees would also be properly excluded from the unit under *Bell Convalescent Hospital*, 337 NLRB 191 (2001). The stipulated election agreement unambiguously limits the unit to employees in the "Licensed Practical Nurse" job classification, and, in addition to specific titles, excludes "all other employees". Therefore, the stipulated election agreement clearly and unambiguously excludes the positions held by Mancini and Rinaldi.

## **REQUEST FOR REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **October 4, 2019**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: September 20, 2019.

Paul J. Murphy, Acting Regional Director  
National Labor Relations Board  
Region One



By: \_\_\_\_\_  
Michael C. Cass, Officer in Charge  
National Labor Relations Board  
Subregion 34

